LIBRARY
SUPREME COURT U. S.

Office-Supreme Court, U.S.
FILED
SEP 3 1964
JOHN F. DAVIS, CLERK

In The

Supreme Court of the United States

October Term, 1963
No. 353

BURDWELL H. SHIPE, and ARTHUR M. BELL, Administrator of the Estate of MADGE E. SHIPE, Deceased,

Appellants

vs.

THOMAS J. BRENNAN,

Appellee

MOTION OF APPELLEE TO DISMISS THE APPEAL OR IN THE ALTERNATIVE, TO AFFIRM THE JUDGMENT OF THE SUPREME COURT OF PENNSYLVANIA

On Appeal from the Supreme Court of Pennsylvania, No. 2 May Term, 1964.

JAMES W. EVANS,
RONALD M. KATZMAN,
GOLDBERG, EVANS & KATZMAN,
Attorneys for Appellee.

300 Blackstone Building,
112 Market Street,
Harrisburg, Pennsylvania.

Murrelle Printing Company, Law Printers, 201-203 Lockhart Street, Sayre, Pa.

INDEX

	Page
Motion of Appellee To Dismiss Appeal or Affirm Judgment:	
I. Pennsylvania Statute Involved and Nature of the Case:	
A. The Pennsylvania Statute	2
B. The Proceedings Below	3
II. Argument:	
A. The Federal Question Is Not Substantial	5
B. The Decision of the Supreme Court of Pennsylvania Is Clearly Correct	12
III. Conclusion	13

TABLE OF CITATIONS

Cases:

Branci v. Wheeling Steel Corp., 152 F. 2d 887 (C.C.A. 3rd, 1945), cert. den. 327 U.S. 801	13
Hendrick v. Maryland, 235 U.S. 610	5
Hess v. Pawloski, 274 U.S. 352 (1927)	5, 12
Howard v. Commissioners of Sinking Fund of City of Louisville, 334 U.S. 624, 626 (1953)	11
International Shoe Co. v. Washington, 326 U.S. 310 (1945)	6
Knott v. Furman, 163 F. 2d 199 (C.C.A. 4th, 1947), cert. den. 332 U.S. 809, reh. den., 332 U.S. 826	8
McGee v. International Life Ins. Co., 355 U.S. 220, 222 (1957)	6, 8, 12

Stokes v. Adair, 265 F. 2d 662 (C.C.A. 4th, 1945), cert. den. 361 U.S. 816 13

STATUTES:

Act of May 14, 1929, P. L. 1721, No. 563, Secs. 1-5, as amended, 75 PS 2001-2005 2

Act of July 1, 1937, P. L. 2656, Sec. 2, 74 PS 86 4

16 USCA, Sec. 457 ..... 12, 13

28 USCA 1391 13

Case Caption

In The
SUPREME COURT OF THE UNITED STATES

October Term, 1963
No.

BURDWELL H. SHIPE, and ARTHUR M. BELL, Administrator of the Estate of MADGE E. SHIPE, Deceased,

Appellants

vs.

THOMAS J. BRENNAN,

Appellee

On Appeal from the Supreme Court of Pennsylvania, No. 2 May Term, 1964.

MOTION OF APPELLEE TO DISMISS THE APPEAL, OR IN THE ALTERNATIVE, TO AFFIRM THE JUDGMENT OF THE SUPREME COURT OF PENNSYLVANIA

The appellee, by his attorneys, moves the Honorable Court to dismiss the appeal herein filed, or in the alternative, to affirm the judgment of the Supreme Court of Pennsylvania for the reason that the federal question presented is not substantial, and the decision of the Supreme Court of Pennsylvania interpreting the state statute involved is so clearly correct that plenary consideration is not warranted.

I.

THE PENNSYLVANIA STATUTE INVOLVED AND THE NATURE OF THE CASE

A.

The Pennsylvania Statute

The appeal raises the issue of the validity of the Pennsylvania Nonresident Motorist Act (Act of Pennsylvania Assembly, 1929, May 14, P. L. 1721, No. 563, Sections 1-5, as amended; 75 Purdon's (Pa.) Statutes, Sections 2001-2005, as amended). This act provides that a nonresident, or a resident who subsequently becomes a nonresident, who accepts the privileges of operating a vehicle (or licensure of the same), thereby appoints the Secretary of the Commonwealth as his agent to accept service of process for motor vehicle accidents or collisions occurring "within the Commonwealth." Thereafter, the act provides for the service of the process upon the Secretary of the Commonwealth and upon the defendant by registered mail, return receipt requested, further providing for continuance "as may be necessary to afford the defendant reasonable opportunity to appear and defend the action." The statute is identical to or

substantially the same as those enacted by all other states, and is set forth in full in appellant's "Jurisdictional Statement" (p. 6).

B.

The Proceedings Below

On May 26, 1961, the appellee, a resident of Pennsylvania, was seriously and permanently injured when struck by a motor vehicle operated by appellant, Madge E. Shipe (now deceased), on the confines of the New Cumberland General Depot, a federal reservation. The motor vehicle operated by Madge E. Shipe was jointly owned by her and her husband, Burdwell H. Shipe, also an appellant. *At the time of the accident, both of the appellants were residents of the Commonwealth of Pennsylvania, both were licensed to operate a motor vehicle by the Commonwealth of Pennsylvania, and the jointly owned vehicle involved was licensed to the appellants by the Commonwealth of Pennsylvania.*

The lands comprising the New Cumberland General Depot are located in York County, Pennsylvania, and were ceded to the federal government by the Commonwealth of Pennsylvania in 1937, wherein Pennsylvania reserved concurrent jurisdiction "in so far that civil process in all cases ... may be executed thereon in the same way and manner as if this juris-

diction had not been ceded." (Act of Assembly, July 1, 1937, P. L. 2656, Section 2, 74 Purdon's Statutes, Section 86.)

Subsequently, in September, 1962, appellee instituted suit against the appellants in the Court of Common Pleas of York County, and service of the Complaint or process was duly made upon the appellants in Florida, pursuant to the provisions of the Nonresident Motorist Act, the appellants having removed themselves from Pennsylvania to the State of Florida prior to commencement of the action, but seven months *after* the accident.

The appellants preliminarily objected raising the issue of their subjection to substituted service of process under that statute. On April 30, 1963, the Court of Common Pleas of York County dismissed the preliminary objections, from which order the appellants appealed to the Supreme Court of Pennsylvania. The Supreme Court of Pennsylvania by its order of April 21, 1964, affirmed the order of the lower court, from which appellants have filed their present appeal.

II.

ARGUMENT

A.

The Federal Question Is Not Substantial

Appellants contend that substituted service upon them under the Pennsylvania Nonresident Motorist Act for an accident occurring on a federal reservation, entirely within the territorial boundaries of Pennsylvania, constitutes a denial of due process. In so doing, appellants have treated themselves as "nonresidents" who were total strangers to Pennsylvania. Such is not the case. At the time of the accident the appellants were residents of and licensed by the Commonwealth of Pennsylvania, and in addition, the motor vehicle involved in the accident was likewise licensed under the laws of Pennsylvania.

The constitutionality of Nonresident Motorist Statutes and the power of a state to regulate the use of its highways has long been decided, beginning with *Hendrick v. Maryland*, 235 U.S. 610, and culminating in *Hess v. Pawloski*, 274 U.S. 352 (1927). These statutes were held not in violation of the Due Process Clause. As stated in *Hess v. Pawloski*, supra (page 356):

"In the public interest the state may make and enforce regulations reasonably calculated to promote care on the part of all, residents and nonresidents alike, who use its highways. The measure in question operates to require a nonresident [as well as a resident who subsequently removes from the state] to answer for his conduct in the state where arise causes of action alleged against him, as well as to provide for a claimant a convenient method by which he may sue to enforce his rights." (Brackets supplied.)

Here, the appellants were licensed, resident operators and owners under the laws of Pennsylvania at the time this cause of action arose. The due process requirements of subjecting a person to a binding judgment in a state where the person has not been personally served with process within the geographical boundaries of the state are clearly complied with in this instance. These requirements have been set out in the decision of this Court in *International Shoe Co. v. Washington*; 326 U.S. 310 (1945), and in *McGee v. International Life Insurance Co.*; 355 U.S. 220 (1957), where it was said (page 222):

"Since Pennoyer v. Neff, 95 U.S. 714, the Court has held that the Due Process Clause of the Fourteenth Amendment places some limit on the power of state courts to enter binding judgments against persons not served with process within their boundaries. But just where this line of limitation falls has been the subject of prolific

controversy, particularly with respect to foreign corporations. In a continuing process of evolution the court accepted and then abandoned 'consent', 'doing business' and 'presence' as the standard for measuring the extent of state judicial power over such corporations . . . . More recently in International Shoe Co. v. Washington, 326 U.S. 310, the court decided that 'due process requires only that in order to subject a defendant to a judgment in personam, if he be not present within the territory of the forum, have certain minimum contacts with it such that the maintenance of the suit does not offend "traditional notions of fair play and substantial justice." ' "

"Looking back over this long history of litigation a trend is clearly discernible toward expanding the permissible scope of state jurisdiction over foreign corporations and other nonresidents. In part this is attributed to the fundamental transformation of our national economy over the years. Today many commercial transactions touch two or more States and may involve parties separated by a full continent. With this increasing nationalization of commerce has come a great increase in the amount of business conducted by mail across state lines. At the same time modern transportation and communication have made it much less burdensome for a party sued to defend himself in a state where he engages in economic activity.

". . . It is sufficient for purposes of due process that the suit was based on a contract which had substantial connections with that state. Cf. Hess v. Pawloski, 274 U.S. 312 . . ."

and at page 244:

"Of course, there may be inconvenience to the insurer if it is held amenable to suit in California where it had the contract, but certainly nothing which amounts to a denial of due process . . ."

"The statute was remedial, in the purest sense of that term, and neither enlarged nor impaired respondent's substantive rights or obligations under the contract. It did nothing more than to provide petitioner with a California forum to enforce whatever substantive rights she might have against respondent. At the same time respondent was given a reasonable time to appear and defend on the merits after being notified of the suit. Under such circumstances it had no vested right not to be sued in California."

It can scarcely be argued that the appellants did not have the "minimum contacts" with Pennsylvania, referred to in the *International Shoe Co.*, case, regardless of where the accident occurred, so long as within the geographical boundaries of the Commonwealth.

The fact that the accident occurred on a federal reservation is immaterial under these circumstances. This Court refused certiorari in *Knott v. Furman*, 163 F. 2d 199 (C.C.A. 4th, 1947), certiorari denied, 332

U.S. 809, rehearing denied, 332 U.S. 826, when the identical question was raised. In the Knott case, the defendant, a Delaware Corporation with its principal office in New York, entered into a contract with the federal government to operate a hotel situated at Old Point Comfort, Virginia, located entirely within the confines of the Fort Monroe Military Reservation on land ceded by the State of Virginia. The defendant corporation was not registered to do business in Virginia and performed no other activities in that state. In the statute ceding the land to the U.S., Virginia reserved the right to execute civil and criminal process over the ceded lands. The plaintiff, a guest at the hotel and a resident of Massachusetts, was injured during a fire at the hotel and instituted a personal injury action in the U. S. District Court of Virginia, *obtaining service over the defendant via substituted process upon the Secretary of the Commonwealth of Virginia as a corporation doing business* within the State of Virginia. The defendant attacked jurisdiction, contending, inter alia, that since the only business done was on a federal reservation, it was not doing business *within Virginia* within the meaning of the Act. This argument was rejected. The Court held (page 202-206):

> "We shall point out later, that for the purpose of venue, the doing of business on the Fort Monroe Military Reservation does not differ from doing business elsewhere in the Eastern District of Virginia; and we think it clear that

such doing of business amounts to consent to the service of process upon the Secretary of the Commonwealth of Virginia and consent to be sued in the federal courts of the district *as well as in the state courts with respect to a cause of action which has arisen there.*" (Emphasis supplied.)

Page 206:

"We come, then, to the question as to whether the application of the statute [substituted service by doing business within the state] is different because the business done was on the Fort Monroe Military Reservation. *We do not think so . . .*

If *this provision* [reservation of execution of process of the ceding statute] *means anything, it means that the laws of the State of Virginia with reference to the service of process run throughout the reservation. This means, of course, not only that state officers may go upon the reservation to serve process, but also that state laws as amended, from time to time will determine what acts on their part constitute service . . .*" (Brackets and emphasis supplied.)

Page 206:

"Since the state has retained the right to serve process on foreign corporations as well as on others within the reservation *and has the power to say what shall constitute such service it follows that any act which may be legally taken as an acceptance of service elsewhere within the*

> *state may be so taken within the reservation. This necessarily means that the doing of business by a foreign corporation within that reservation has the same effect, so far as submitting itself to the local jurisdiction for the service of process is concerned as doing business elsewhere within the state.*" (Emphasis supplied.)

The Court in *Howard v. Commissioners of the Sinking Fund of the City of Louisville*, 344 U.S. 624 (1953), rejected the appellants' theory that a federal reservation creates a legal vacuum and a state within a state, when it said (page 626):

> "The fiction of a state within a state can have no validity to prevent the state from exercising its power over the federal area within its boundaries, so long as there is no interference with the jurisdiction asserted by the Federal Government. The soverein rights in this dual relationship are not antagonistic. Accommodation and cooperation are their aim. It is friction, not fiction, to which we must give heed."

Under these circumstances, and in view of the previous decisions of this Court, the question presented by appellants is not sufficiently substantial to warrant plenary consideration by the Court on written briefs and oral argument. It is indeed the appellee whose rights have been prejudiced by the long delay, and not that of the appellants. The appeal should be dismissed.

B.

The Decision of the Supreme Court of Pennsylvania Is Clearly Correct

---

The Pennsylvania Supreme Court has pointed out that the Pennsylvania Nonresident Motorist Act is clearly within the purview of the Act of Congress of February 1, 1928, 8 USCA, Sec. 457, which, in an action to recover for injuries sustained in an accident occurring on a federal reservation, adopts the laws of the "State within the exterior boundaries of which it may be". Hence the substituted service of process provided under the Pennsylvania statute is valid in accordance with the above Federal Act, and not in violation of due process.

Further, the Pennsylvania Supreme Court held that the words "within the Commonwealth" in the Motorist Act were intended to encompass all territory within the geographical borders of Pennsylvania, and this would include "any federal enclave located therein." Under the circumstances, this cannot be said to "offend traditional notions of fair play and substantial justice." *McGee v. International Life Insurance Co.*, supra. For purposes of the Nonresident Motorist Act, the geographical boundaries of the New Cumberland General Depot were non-existent and, therefore, due process was not denied. *Hess v. Pawloski*, 274 U.S. 352 (1927).

III.

CONCLUSION

We respectfully submit that the appellants have not presented a substantial federal question, and that the Due Process questions raised by them have already been decided adversely to the appellants by this Court. Further, the judgment of the Supreme Court of Pennsylvania is essentially correct and the applicable law would require ultimate adoption of its decision, whether by the same line of reasoning or not. In fact, the only way a serious due process question would be presented would be as a result of a contrary judgment. That would create an almost insurmountable financial hurdle upon appellee, by *compelling* him to try his case in the State of Florida, many miles distant from the location of the scene of the accident, the residence of his medical and lay witnesses to the accident, and the residence of appellants at the time of the accident. Appellee had no recourse to an action in the appropriate Federal Court because of the absence of proper venue (28 USCA 1391): *Stokes v. Adair*, 265 F. 2d 662 (C.C.A., 4th, 1945), certiorari denied, 361 U.S. 816, interpreting 16 USCA 457, and *Branci v. Wheeling Steel Corp.*, 152 F. 2d 887 (C.C.A., 3rd, 1945), certiorari denied, 327 U.S. 801.

There has been no violation of the Due Process Clause of the Constitution of the United States, no

substantial federal question is present, and the appeal should be refused.

Respectfully submitted,
JAMES W. EVANS,
RONALD M. KATZMAN,
GOLDBERG, EVANS & KATZMAN,
Attorneys for Appellee.

300 Blackstone Building,
112 Market Street,
Harrisburg, Pennsylvania.